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Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

11 CR 1032 (PAE)

5 MIGUEL STRONG,

6 Defendant.

7 -----x

8 New York, N.Y.
9 February 25, 2015
10:40 a.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA,

16 United States Attorney for the
Southern District of New York

17 MICAH WJ SMITH

RACHEL MAIMIN

18 Assistant United States Attorney

19 KAFAHNI NKRUMAH

20 Attorney for Defendant

21 ALSO PRESENT:

22 ANNA MARIA RISO, Spanish Interpreter

23 ERIKA DE LOS RIOS, Spanish Interpreter

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1 THE DEPUTY CLERK: For sentencing, United States
2 against Miguel Strong, S5:11 CR 1032.

3 Government ready?

4 MR. SMITH: Yes. Good morning, your Honor. Micah
5 Smith and Rachel Maimin, for the government.

6 MS. MAIMIN: Good morning.

7 THE COURT: Good morning.

8 THE DEPUTY CLERK: Defendant?

9 MR. NKRUMAH: Good morning, your Honor. Kafahni
10 Nkrumah, for Miguel Strong, the defendant, who is at the
11 defense counsel table.

12 THE COURT: Good morning, Mr. Nkrumah.

13 Good morning to you, Mr. Strong.

14 And I will note for the record --

15 THE DEFENDANT: Good morning.

16 THE COURT: -- that Mr. Strong is assisted today by a
17 Spanish-speaking court certified interpreter.

18 As everyone here is aware, the sentencing proceeding
19 in this case was originally scheduled for February the 3rd, and
20 we got going in that proceeding, but stopped fairly early in it
21 when it became apparent to me that there were certain letters
22 written by family members of the defendant that defense counsel
23 had received, but which I had not received, and I wanted to
24 make sure that we had time for those letters to be provided to
25 me.

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1 At that conference, I had gotten to the point of
2 reviewing all the other materials that had been submitted in
3 connection with sentencing. I'm not going to review all of
4 those again. I'm incorporating by reference the list of those
5 materials, including the presentence report and the parties'
6 various sentencing submissions that I put on the record at the
7 February 3rd conference.

8 Since that conference, though, I have received two
9 things. I have received a letter from the defendant's younger
10 sister, Escrawlina, and I have received a separate letter from
11 the defendant's older sister, Eswilda. Let me ask, first of
12 all, to confirm: Has the defendant received those letters?
13 Has the defense received those letters?

14 MR. NKRUMAH: Yes, your Honor. And I would like to
15 add -- I know I'm going ahead, but I would like to add to the
16 Court, there are two other letters, your Honor, that we had
17 received, and I want to explain to the Court what happened --

18 THE COURT: We'll take that in a moment.

19 Let me just ask the government: Have you received the
20 two letters that I listed a moment ago?

21 MR. SMITH: Yes, your Honor.

22 THE COURT: Have any other materials been submitted
23 since February 3rd in connection with sentencing? Government,
24 are you aware of any other materials that have been submitted
25 in connection with sentencing?

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1 MR. SMITH: Only the two new letters that I believe
2 defense counsel is about to raise.

3 THE COURT: Very good.

4 And, Mr. Nkrumah, I take it the entirety of what
5 you're proposing to add to the sentencing record are the two
6 new letters?

7 MR. NKRUMAH: That is correct, your Honor.

8 THE COURT: Go ahead, please. Explain.

9 MR. NKRUMAH: A brief explanation to the Court. As I
10 explained to the Court on the last court date, I'm in the
11 process of relocating, and I have relocated, and my relocation
12 occurred halfway across the country. I'm in Houston, Texas,
13 right now.

14 THE COURT: Can you just keep your voice up. I think
15 we're having a little difficulty hearing you.

16 MR. NKRUMAH: I'm in Houston, Texas, right now. So
17 the court-appointed interpreter who translated these letters,
18 we received the letters, one is from Ms. Maxima Strong, my
19 client's mother, and one is from Raphael Medina, my client's
20 stepfather. We received those handwritten letters in Spanish.

21 I, in turn, turned those letters over to Ms. Jan
22 Calloway, a court-certified interpreter -- federal
23 court-certified interpreter here in the Southern District of
24 New York, and she interpreted the letters and FedExed them to
25 me in Houston. FedEx claimed that they left the letters at my

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1 office -- outside the door of my office and never gave it to a
2 person at 4:48 p.m. We have a tracker on the letters and
3 everything. FedEx is not able to find the letters, we have
4 been unable to find the letters, but I was able to get the
5 translations from Ms. Calloway, and I would like to provide
6 those translations to the Court for the Court's review.

7 THE COURT: Okay. Very good. In other words, what
8 you're representing to me is that you have a qualified
9 translator who saw the original Spanish language letters and
10 interpreted them, and therefore, although we don't have those
11 original letters, the translations ought to accurately capture
12 what was said in those letters?

13 MR. NKRUMAH: That is correct, your Honor.

14 THE COURT: Okay. Do you, though, now have all --
15 even in that form, you do now have at least a translation of
16 every family letter that you received?

17 MR. NKRUMAH: Yes, your Honor.

18 THE COURT: Okay. Very good. I'm happy to have them
19 handed up.

20 For the record, counsel has handed up a typed English
21 language translation of a letter from Maxima Medina and a
22 separate typed English language translation of a letter from
23 Raphael Medina.

24 When did you provide these to the government?

25 MR. NKRUMAH: This morning, your Honor, when they came

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1 into the courtroom.

2 THE COURT: Okay. Mr. Smith, have you now received
3 these two letters?

4 MR. SMITH: I have, your Honor, and I have reviewed
5 them as well.

6 THE COURT: You have had sufficient time to review
7 them?

8 MR. SMITH: Yes, your Honor.

9 THE COURT: And, again, just to confirm, Mr. Nkrumah,
10 to make sure there's no doubt, there are no letters at this
11 point that you have in any form received that I have not
12 received an English language version of, correct?

13 MR. NKRUMAH: Yes, your Honor.

14 THE COURT: No missing letters?

15 MR. NKRUMAH: No missing letters.

16 THE COURT: All right. I'm going to take a moment and
17 read these.

18 MR. NKRUMAH: Thank you, your Honor.

19 (Pause)

20 THE COURT: All right. Thank you. I've read the two
21 recently provided letters.

22 Just to be absolutely clear, is either counsel aware
23 of any item that's been submitted in connection with sentencing
24 other than the ones I listed on February 3rd and today? Have
25 we now completely identified every aspect, every item that is

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1 before the Court for purposes of sentencing?

2 MR. SMITH: I believe so, your Honor, yes.

3 MR. NKRUMAH: Yes, your Honor.

4 THE COURT: All right. Very good.

5 Turning, then, to the presentence report.

6 Mr. Nkrumah, have you read the presentence report?

7 MR. NKRUMAH: Yes, I have, your Honor.

8 THE COURT: Have you discussed it with your client?

9 MR. NKRUMAH: Yes, I have, your Honor.

10 THE COURT: Mr. Strong, has the presentence report
11 been read to you?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you discussed it with Mr. Nkrumah?

14 THE DEFENDANT: Yes.

15 THE COURT: Have you had the opportunity to go over
16 with Mr. Nkrumah any errors in the report or anything else that
17 should be taken up with the Court?

18 THE DEFENDANT: Yes.

19 THE COURT: Mr. Smith, have you reviewed the
20 presentence report?

21 MR. SMITH: Yes, your Honor.

22 THE COURT: Putting aside issues with respect to the
23 sentencing guidelines, does anyone have any objection to the
24 report regarding its factual accuracy?

25 MR. SMITH: No, your Honor.

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1 THE COURT: Mr. Nkrumah?

2 MR. NKRUMAH: No, your Honor.

3 THE COURT: Then hearing no objections, I will adopt
4 the factual recitations set forth in the presentence report.
5 The presentence report will be made a part of the record in
6 this matter. It will be placed under seal. In the event an
7 appeal is taken, counsel on appeal may have access to the
8 sealed report without further application to this Court.

9 Have the parties' sentencing submissions, either in
10 whole or in redacted form, been publicly filed?

11 MR. SMITH: I believe so, your Honor. I'll
12 double-check today.

13 THE COURT: Very good. I'll ask you to do so if you
14 haven't.

15 Mr. Nkrumah?

16 MR. NKRUMAH: The sentencing memorandum has been
17 publicly filed, your Honor, but the other materials, as the
18 Court is aware, are under seal.

19 THE COURT: Very good. Well, I authorize you to file
20 under seal the personally sensitive parts of your sentencing
21 submission.

22 MR. NKRUMAH: Thank you.

23 THE COURT: Thank you.

24 The next issue I need to turn to involves the
25 sentencing guidelines. The Court is, of course, no longer

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1 required to follow the sentencing guidelines, but I am required
2 to consider the applicable guideline in imposing sentence. To
3 do so, it's necessary that the Court accurately calculate the
4 guideline sentencing range.

5 In this case, there was a plea agreement in which the
6 parties stipulated to a particular calculation of the
7 sentencing guidelines. The presentence report is not in accord
8 with that agreement in one respect. The parties have
9 stipulated that under sentencing guideline Section 2A1.1A,
10 application note 2(b), which relates to felony murder, a
11 three-level downward departure is warranted because the
12 defendant did not cause the death of David Avila-Gomez
13 knowingly or willfully, but instead is liable under a theory of
14 felony murder. The presentence report does not adopt that
15 adjustment.

16 I heard the evidence at the relatively recent trials
17 of Felix Lopez-Cabrera, who was a participant in that murder,
18 and of course, the two other defendants. I'm familiar with the
19 circumstances of the Avila-Gomez murder. It is clear to me,
20 based on the evidence I heard, that it was a classic felony
21 murder in that there was no preexisting plan among the five men
22 in the car to kill Mr. Avila-Gomez, the plan instead was only
23 to rob him. There is not a factual basis to believe that
24 Mr. Strong, as the driver of the car, knew that Mr. Avila-Gomez
25 would be shot. I, therefore, accept the parties' view that the

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1 three-level downward departure applies. Otherwise the
2 presentence report's guidelines calculation is accurate and
3 unobjected to.

4 Accordingly, based on the parties' agreement, and the
5 absence of objection, and my own independent evaluation of how
6 the sentencing guidelines apply here, I accept the guideline
7 calculation in the presentence report with the addition of the
8 three-level downward departure pursuant to application note
9 2(b).

10 The bottom line is that I find that the offense level
11 here is 37, the Criminal History Category is I, and the
12 guideline range is between 210 and 262 months' imprisonment.

13 Does anybody have any objection or correction to that?

14 MR. SMITH: No, your Honor.

15 MR. NKRUMAH: No, your Honor.

16 THE COURT: Okay. Because the Court's calculations
17 differ from those in the presentence report, I order that the
18 presentence report be amended to reflect that one change I've
19 just made.

20 The next subject I need to take up involves
21 departures, which is to say within the framework of the
22 sentencing guidelines. In the plea agreement, both parties
23 agreed that with the exception of the departure ground just
24 addressed, neither an upward, nor a downward departure, again
25 within the guidelines framework, is merited. Having reviewed

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1 the presentence report and the parties' submissions, I'm not
2 certain by any means that as a technical legal matter, that is
3 correct. It is clear to me that Mr. Strong has very
4 considerable deficiencies in his mental functioning. The
5 materials submitted to me show demonstrated evidence of that,
6 including Dr. Shea's persuasive report, which in turn is
7 corroborated by the findings of the Social Security
8 Administration.

9 It seems to me that Mr. Strong's compromised mental
10 faculties might well support a downward departure under Section
11 5H1.3, where mental health difficulties are presented to an
12 unusual degree and distinguish the defendant's case from the
13 typical cases under the guidelines. However, my judgment is
14 that it's not necessary to determine within the constricting
15 framework of the guidelines whether or not the facts here rise
16 to the level of meeting the Section 5H1.3 standard. That's
17 because the guidelines are advisory, and under the Section
18 3553(a) factors, I can fully take account of Mr. Strong's
19 mental health difficulties, which I do regard as mitigating.

20 Section 3553(a) allows me to achieve, in effect, the
21 same outcome as I could and would achieve had a downward
22 departure on these grounds been available as a matter of law
23 and had I elected to use that as a basis to impose a
24 below-guideline sentence.

25 For that reason, even if I had the legal latitude to

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1 departure downward, I would not do so. I'll instead consider
2 Mr. Strong's mental health difficulties in my assessment of the
3 3553(a) factors. I do believe these difficulties are
4 mitigating factors in this case.

5 Having covered all that background, does the
6 government wish to be heard with respect to sentencing?

7 MR. SMITH: Yes, your Honor. I'd like to just begin
8 by noting that although there are a lot of letters from the
9 defendant's family, there are no letters from Mr. Avila-Gomez's
10 family. We have made efforts to reach Mr. Avila-Gomez's
11 family. From what we understand, they are probably still in
12 Honduras. As your Honor will recall from the trial testimony
13 and evidence, Mr. Avila-Gomez came to the United States, was
14 working here, and supporting his family. One person whose life
15 he touched while he was here was Eduarda Tavaréz, who testified
16 that she had been essentially her landlord -- his landlord, but
17 also friend. And I think that provided some context for
18 Mr. Avila-Gomez's life, but I do think it's significant in
19 thinking about the impact that Mr. Strong's crime has had on
20 real people, that Mr. Avila-Gomez was here, working, providing
21 support to his family in Honduras. And there is a very deep
22 irony that Mr. Avila-Gomez came here from a country that is
23 ravaged by gang violence in the hope of being able to work and
24 support his family, and he was murdered on the streets of
25 Yonkers.

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1 I think with respect to the seriousness of the offense
2 here, it is extraordinarily serious. This is not criminal
3 conduct that one can confidently say Mr. Strong will walk away
4 from even if he does not return to gang violence. It was not a
5 violent crime that was motivated by any sort of retaliatory
6 desire, as some of them that your Honor has become familiar
7 with were. It was driven by a combination of loyalty to
8 friends, fellow gang members, and also by one of the gang
9 member's financial interest.

10 So this is -- I think the seriousness of this crime
11 and its motivations, I think, cannot be tied to any time and
12 place, and I think that is particularly true because of its
13 relative recency. One of the things your Honor pointed out in
14 the sentencing of another defendant, Limet Vasquez, was that
15 the murder in that case had taken place in 2005, and that was
16 significant because Mr. Vasquez was arrested several years
17 later, was not involved ever again in conduct, at least of that
18 nature. He was involved in some other incidents.

19 By comparison, Mr. Strong was involved in this
20 incident in 2009 and was arrested in 2011. So unlike
21 Mr. Vasquez, who had several years, including some years after
22 being released from prison, to demonstrate at least the
23 beginnings of a track record which was reflected in letters
24 from his family, Mr. Strong has not demonstrated that at all.
25 And I thought it was notable that the two recent letters that

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1 were supplied indicated that the family doesn't believe that he
2 has overcome some of these challenges. They actually were
3 surprised that he was arrested for anything more serious than a
4 suspended license.

5 THE COURT: I was struck as well by the fact that the
6 letters both effectively assert his innocence.

7 MR. SMITH: And that's correct, your Honor. Our
8 position is that a within guideline sentence is appropriate
9 principally to reflect the seriousness of this offense.

10 THE COURT: What's your assessment of the
11 incapacitation rationale, the need for a sentence to protect
12 the public? It's a -- the circumstances reflected in terms of
13 mental faculties ironically -- although mitigating perhaps from
14 a level of moral justification, may ironically point in the
15 other direction in terms of public protection.

16 MR. SMITH: That's correct, your Honor. I think it's
17 troubling that -- just considering the factual circumstances of
18 this incident. Mr. Strong wasn't forced to join this robbery
19 conspiracy. There's no evidence that anyone ever pressured him
20 into doing it. He was, as your Honor will recall from the
21 testimony, like the other cooperating -- like the cooperating
22 witnesses who testified, was simply asked. Mr. Lopez-Cabrera
23 described the circumstances he was dealing with, that he had a
24 drug debt, and that he wanted some support, and Mr. Strong and
25 the other individuals volunteered. And it was really as simple

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1 as that.

2 I think one of the things that the trial record made
3 clear is that there was this gang norm that required loyalty of
4 this sort, but I don't think that it was just the gang norm
5 that caused Mr. Strong to participate in this. I think he was
6 not able to demonstrate the kind of judgment that would be
7 required to not go along with a plan that had these very
8 devastating consequences.

9 I don't think there's anything in the record that
10 suggests he has changed or has matured. I think he presents
11 the same risk of going along with these sorts of crimes today
12 that he did four years ago or six years ago. So I do think
13 that that is a very serious consideration.

14 It also is, we agree, a mitigating circumstance. We
15 do think that it is, though, a mitigating circumstance that has
16 to some extent already been accounted for in our agreement to
17 reduce, under 2A1.1, the offense level for his conduct, because
18 that was one of the reasons why we thought it was appropriate
19 to agree in the plea agreement to that downward departure,
20 which is --

21 THE COURT: Is that right? I thought the three-level
22 reduction really reflected the lack of a specific intent to
23 murder regardless of whether that defendant in question had
24 powerful or less powerful mental faculty.

25 MR. SMITH: It is a fact that there was no specific

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1 intent to murder that makes Mr. Strong qualified for that
2 downward departure, but the qualification doesn't necessarily
3 have it lead to its applying, and I think it is within, I
4 think, the discretion of the Court whether it should. We
5 agree, of course, that that was the right decision.

6 One of the reasons we thought it was the right
7 decision was because of his state of mind, which includes not
8 just the fact that he didn't have a specific intent to bring
9 about a death, but also because of his less sophisticated
10 mental faculties. So we think to some extent, that's already
11 accounted for in the reduction.

12 THE COURT: All right. Thank you.

13 Let me just ask a few technical questions. You've
14 already answered my question as to whether there are any
15 representatives of the victim, Mr. Avila-Gomez, who in any way
16 either are physically present or in any other way have
17 communicated with the Court. I appreciate that you have done
18 what you can to reach out to them.

19 Forfeiture, restitution, is the government seeking
20 either of those?

21 MR. SMITH: No, your Honor.

22 THE COURT: Thank you.

23 Mr. Nkrumah, do you wish to be heard?

24 MR. NKRUMAH: Yes, I do, your Honor.

25 Before I actually begin, your Honor, I just want to

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1 address a couple of points that the government made.

2 THE COURT: Just kindly speak into the microphone.
3 Thank you.

4 MR. NKRUMAH: Actually, to begin, your Honor, I'm
5 going to address a couple of points that the government made.

6 First, your Honor, we don't in any way want to
7 minimize the death of Mr. Avila-Gomez. It was a senseless
8 murder committed by a codefendant of Mr. Strong's, unbeknownst
9 to Mr. Strong, not directed by Mr. Strong, or anything in that
10 nature. It was, again, a senseless murder that should have
11 never happened, a senseless loss of life that we -- when I say
12 "we," your Honor, I include Mr. Strong -- greatly regrets and
13 greatly regrets being there that night.

14 In the letters that were handed up to the Court from
15 Mr. Strong's family, your Honor, I would ask the Court not
16 to -- to try to take into context when the family writes that
17 they didn't believe that Mr. Strong had done anything wrong.
18 In the context of the family -- the way the family is looking
19 at it -- and this is something that I've had to explain to
20 Ms. Strong and her husband at the onset of the charges and
21 throughout and is something that they have difficulty grasping,
22 and really I understand, because most people who do not travel
23 in the circles that we travel and understand the law as we do
24 have great difficulty understanding the conspiracy law. They
25 understand that Miguel was with some kids who did something

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1 wrong and something bad. What they don't understand is that
2 him being present, and not just being present, but agreeing to
3 the overall plan which resulted in the end result of murder,
4 ties him into it as if he pulled the trigger. They look at it,
5 like most people in the streets, most people in the public, who
6 don't understand conspiracy law look at it.

7 THE COURT: But, Mr. Nkrumah, it goes beyond that.
8 And I don't mean to beat the point too hard, but it's one thing
9 to say that the law attributes responsibility for the murder to
10 Mr. Strong on account of his agreement to the robbery plan.
11 It's another thing to say -- and for somebody who's not a
12 lawyer to wonder why that is. It's another thing entirely to
13 say he did nothing wrong. By his own admission, he was a
14 willing participant in a robbery of an innocent person, which
15 happens to have led to a death. It doesn't appear as if
16 Mr. Strong's family is aware of that fact.

17 MR. NKRUMAH: Your Honor, I think -- I think the main
18 letter that you're referring to is the letter by his mother,
19 Maxima Medina, Ms. Strong.

20 THE COURT: Well, I'm referring to both of the
21 letters. Mr. Raphael Medina says he has not done anything, and
22 then his mother says my son has never done anything wrong. So
23 both of them pretty much declaratively say it. Again, it
24 doesn't bear on his culpability. It offers a minor degree of
25 insight into the extent into which the family is aware of the

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1 side of him that participated in the gang-related conduct at
2 issue.

3 MR. NKRUMAH: Your Honor, I believe that the family is
4 aware. Again, in Ms. Medina's letter, she states that she did
5 not -- to her knowledge, she never knew that he had done
6 anything bad. Again, to her knowledge. Coming to grips with
7 something like this -- coming to grips with something like this
8 is something that some people take to readily, and some people,
9 it takes time. Again, your Honor, in the discussions that I
10 have had over the years with the family regarding these
11 charges, we have talked about this, and they do understand --
12 they do understand that Miguel was involved in gang and -- was
13 involved in the Trinitarios gang, they do understand that
14 Miguel's involvement in that gang led to incidents.

15 When they state that he didn't do anything wrong,
16 they're not necessarily denying the fact that Mr. Strong was
17 involved in these incidents and shouldn't be punished for his
18 actions. What they're basically stating, your Honor, as,
19 again, unsophisticated people who are not from this country,
20 who were not raised in this country, and who have different
21 understandings than we may have in this country, their
22 understanding, which may not comport totally to ours, it may
23 take them time to understand what has happened to truly
24 understand what has happened. But, your Honor, that in no way
25 denies the fact that they understand what's going on with

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1 Mr. Strong. They support Mr. Strong thoroughly in this, and
2 they are committed to doing everything they can to not only
3 help Mr. Strong through his prison sentence, but afterwards.

4 The last thing, your Honor, that I'd like to address
5 before I go into my final remarks regarding Mr. Strong's
6 sentencing is the matter of nothing showing that Mr. Strong has
7 matured. I totally don't agree with that.

8 I just use as an example his prison record. Now,
9 Mr. Strong has been incarcerated for over three years in this
10 matter. If you count from the time of the murder, which was in
11 2009 --

12 THE COURT: He was arrested in December 2011, correct?

13 MR. NKRUMAH: Yes.

14 If you count the time from the murder, as the
15 government has done for the other defendant, and said that he
16 showed five years instead of Mr. Strong's two years, if you
17 count those two years, plus the time that Mr. Strong has been
18 in this environment and a little bit about MDC, the environment
19 that he's in, and his disabilities, which makes him a different
20 offender from a non-ill offender, which makes the effect of
21 jail in prison upon him as an ill offender different.

22 As the Court is aware of Mr. Strong's disabilities, I
23 won't go into it. Those disabilities prevent Mr. Strong from
24 doing a number of things -- a number of things within the MDC
25 community that normal inmates -- normal clients who are

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1 awaiting the resolution of their cases are allowed to do,
2 programs, getting involved in jobs that pay, try to study for
3 their GED if they don't have them. Because of Mr. Strong's
4 disabilities, he's not able to do any of those things, your
5 Honor. 24 hours a day, seven days a week, Mr. Strong's life is
6 a continuing, continuous life of boredom, of stagnation, and
7 the little bit of activity that's available to alleged
8 offenders in the jail, Mr. Strong can't participate in.
9 Despite all of this, your Honor, Mr. Strong, in the three and a
10 half years that he's been incarcerated, has had one infraction
11 in the MDC, which I believe, your Honor -- let me back up.

12 He's had one infraction in the MDC, your Honor. On
13 top of that, this young man, when I first met him, couldn't
14 speak a lick of English, couldn't read a lick of English, nor
15 Spanish. Today, when I go to visit Mr. Strong, in the three
16 and a half years, something that the public school system
17 wasn't able to help him do, he talks to me in English. He
18 tries his best. He wants to try to take his GED, he wants to
19 learn how to read and write, he understands how important it
20 is, but, most importantly, he understands how important it is
21 for him to try to overcome the disabilities that he has.

22 At the time of this murder, I believe Mr. Strong may
23 have been 18 years old. Even though by legal standards an
24 adult, by no means was Mr. Strong at 18 years old an adult.
25 Mr. Strong, as the Supreme Court has noted to juveniles, was a

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1 juvenile in every sense, and his mental disabilities further
2 hampered his ability to reason, his ability to understand
3 consequences, his ability to do the things that you and I can
4 do on a regular basis.

5 Today, Mr. Strong has gotten better in that. Every
6 time we meet and I speak with Mr. Strong, I tell him about
7 protecting himself where he is, because this court is aware of
8 the incidents of assault that happens in jails and mostly in
9 prisons. He tells me that he will. I tell him to really,
10 really scrutinize, really look at the people who call
11 themselves his friends. He better understands that now, your
12 Honor. He's sorry. I know he's sorry that he had to go
13 through this to understand that, but he better understands that
14 now, and he does. He stays to himself.

15 Unfortunately, that's a trait of incarcerated
16 individuals with mental disabilities - they do tend to stay to
17 themselves, and he does do that in the MDC, but the few friends
18 that he has made in the MDC, one who helped him write the
19 letter that I will read to the Court on his behalf, those are
20 friends that he's -- he went through a different vetting
21 process than the process he went through with the friends who
22 led him into the Trinitarios. This young man has grown into a
23 man in those three and a half years, a young man, but this
24 young man still suffers from the same disabilities that
25 crippled him at the time that he made the decision to join

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1 these individuals in the robbery plan, a plan that he had
2 nothing to do with in the sense of formulating the plan, a plan
3 that he had nothing to do with in the sense of picking out the
4 victim, and a plan he had nothing to do with in the sense that
5 he didn't carry a weapon, nor did he choose to.

6 This young man is a different man today from that
7 young man, still fighting the disabilities that he will fight
8 for the rest of his life. But to say that there is no sense of
9 improvement is outlandish at best.

10 I'm not going to go over what was in my sentencing
11 memorandum, your Honor, to a great extent because I know that
12 this Court has read it fully.

13 THE COURT: I have.

14 MR. NKRUMAH: But I will highlight just a couple of
15 things, your Honor. And what I will highlight is my client's
16 mental health disability. Individualized sentencing is the
17 standard in this country. The Supreme Court has said it, the
18 Second Circuit has said it, and all the other circuits have
19 held that the law sentences each defendant as an individual,
20 taking into account all of his circumstances. The Supreme
21 Court has also held that individuals who suffer from mental
22 health disabilities should be viewed differently from other
23 individuals in sentencing.

24 The Court realizes that people who suffer from mental
25 health disabilities can be easily manipulated, which is what

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1 happened not only in this incident, your Honor, but in his
2 entire involvement with the Trinitarios set. He may not be
3 fully able to comprehend situations and consequences of the
4 decisions because they are incapable of logically working the
5 consequences to their conclusions. That is exactly what
6 happened in the incident that Mr. Strong is now standing before
7 this Court in.

8 That mental health disability defendants are often
9 used by codefendants who gain a trust and friendship of the
10 mentally disabled individual, who then is afraid to not go
11 along because that person is afraid to lose their friendship.
12 And as I stated in my sentencing memorandum, your Honor, that
13 was the case with Mr. Strong. When Mr. Strong came over to the
14 United States, he didn't want to come. He lost his
15 grandfather, who was his best friend, who was his everything in
16 Santo Domingo. As stated in letters, and in the sentencing
17 memorandum, and in the reports by the psychiatrist, when
18 Mr. Strong lost his grandfather, he lost his world.

19 When his mother brought him over here, he was lost.
20 He couldn't speak the language, English or Spanish, because he
21 had no schooling in Santo Domingo. He couldn't operate in a
22 regular public school. This Court understands how cruel
23 children can be, and that cruelty didn't pass Mr. Strong here.
24 They didn't see Mr. Strong and see his disabilities and say, I
25 feel for you, let me help you. They saw Mr. Strong, realized

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1 his disabilities, and ridiculed him to the point where
2 Mr. Strong avoided people, wouldn't go to school, everything.
3 Here comes his friends, here comes the Trinitarios, they can
4 use him because he's a big kid. They can use him because they
5 see that in order for him to keep their friendship, the only
6 friends that he has, he's willing to do what they ask him to
7 do, help them in their endeavors.

8 Everything that Mr. Strong did, every offense that the
9 government alleges Mr. Strong did in this -- in this incident
10 and his involvement with the Trinitarios are offenses that
11 mentally disabled individuals commit when they're being used in
12 that manner. These were offenses that Mr. Strong didn't think
13 about and do on his own, but was told to do, or followed,
14 because of the position that he was in, because of the mental
15 disability, because of the position that he was in, because of
16 the fact that because of that disability, his inability to make
17 friends, his inability to connect.

18 And as I stated in the sentencing memorandum, as you
19 saw in some of the letters, your Honor, it just didn't end with
20 the friends. Even at home, Mr. Strong was ridiculed. Even at
21 home, Mr. Strong did not receive the support that he needed at
22 that time to overcome these disabilities. His brother, who he
23 went to school with, ridiculed him in front of girls to the
24 point, your Honor, where one time, Mr. Strong attempted to take
25 his life, where his sister, Eswilda, realized something was

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1 wrong, found him, made him throw up all that he swallowed, and
2 then the two of them never told Mom.

3 This is the type -- these are the circumstances
4 surrounding Mr. Strong's being inducted into this gang. These
5 are the circumstances that surrounded Mr. Strong the day he
6 agreed to drive, an agreement made in happenstance, your Honor,
7 because they knew that Mr. Strong could get his hands on the
8 vehicle. Why? Because Mr. Strong used that vehicle to try to
9 support himself. He can't read, he can't write, he can't make
10 change, but he goes to shopping centers, and he helps
11 individuals with their packages, drives them home for a flat
12 fee. He memorizes the road so he can get back and forth, so he
13 wouldn't get lost. These are the things that Mr. Strong did to
14 try to support himself. And he used the van, which his family
15 helped him to get, because they were encouraged that he was
16 doing something independently maybe one of the first times in
17 his life. These kids took advantage of that, and Mr. Strong
18 sits here before you today.

19 We talk about his adjustment to incarceration, your
20 Honor, and he's adjusted well in the MDC, but the MDC, as this
21 Court is aware, is a jail and is entirely different from where
22 Mr. Strong will eventually serve out the bulk of his sentence,
23 which is in one of the prisons of the United States Government.
24 This Court is aware of what happens in prisons.

25 Criminal punishment involves hard treatment, your

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1 Honor. Imagine the typical offender without major mental
2 health problems sentenced to a term of ten years in prison. He
3 enters prison nervous, but determined to protect his physical
4 and well-being. That's every person who enters a prison, your
5 Honor. Initially he keeps to himself and appraises his new
6 environment. He soon discerns the hierarchy among prisoners,
7 the benefits and risks of membership of various groups, and the
8 dynamic between prisoners and guards. He learns both the
9 disciplinary rules imposed by the prison, and through
10 observation of a few well-placed questions, the unwritten rules
11 among prisoners. He pays careful attention to what conduct and
12 speech will constitute a violation of these rules as well as
13 the consequences that will follow. He learns how to put up a
14 tough front, avert danger, and respond to confrontations in a
15 way that will deter further acts of aggression. He forges
16 alliances, he develops a routine. In a nutshell, he copes.
17 After a period of a few months, he adjusts. He learns to live
18 with his sentence.

19 Now, your Honor, imagine an offender serving the same
20 sentence for the same crime committed with the same degree of
21 culpability with an Axis I disorder, mental disability, such as
22 schizophrenia, depression, bipolar disorder, seriously ill, yet
23 declined competent. He enters prison in the midst of
24 delusions. He has been found, and they have gotten him.
25 Unsure of whom to trust, he keeps to himself, avoids eye

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1 contact, and mutters to himself anxiously. Because his
2 thoughts and speech are disorganized, he obsessively repeats
3 himself, uses fabricated words, and delivers nonsensical
4 statements as though they were commonplace observations. He
5 soon earns the nickname Bug, prison slang for a mentally ill
6 inmate, and becomes a target for physical and sexual abuse.
7 Feeling alienated and distressed, he withdraws to his cell.
8 His isolation morphs into personal neglect, and guards respond
9 by disciplining him for hygiene violations, and he refuses to
10 leave his cell.

11 After weeks of silent abuse, he strikes another
12 prisoner and lands in solitary confinement. The mental strain
13 of isolation, and forced boredom, and constant illumination of
14 his cell propel him into a deep depression and leads to a
15 psychotic breakdown. He serves most of his prison term
16 disoriented, alone, and suffering.

17 I know the consequences of prison life are not what
18 this Court intends when this Court imposes a sentence that it
19 will impose on Mr. Strong. But these consequences, your Honor,
20 are real. These consequences, your Honor, are what Mr. Strong
21 may -- what Mr. Strong may face, a real possibility of facing,
22 because his mental illness is the kind that eventually someone
23 will realize. If it's not, when he's going to go get his
24 medication, someone will realize it. If it's not, when he's
25 talking, someone will realize it, and they'll realize that he's

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1 an easier mark.

2 Physical assaults in prison, they're doubled for
3 people with mental illness, the Department of Justice, Bureau
4 of Prisons statistics report. Physical assaults are doubled
5 for inmates in Mr. Strong's condition. Sexual assaults,
6 they're 1.2 times more likely to be sexually assaulted than
7 nominal offenders. Disciplinary, your Honor, I talked a little
8 about the rules, formal, informal. Well, when he breaks the
9 formal rules, he loses privileges, visitation, and, most
10 importantly, how these prisons in this country deal with our
11 mentally ill is he's placed in solitary confinement, a
12 condition and a state that can only help but exacerbate his
13 mental condition.

14 Breaking the informal rules, your Honor, can bring
15 anything from a beating to death, and this is something that
16 Mr. Strong has to deal with differently from a regular
17 offender.

18 Your Honor, we understand that these possible
19 consequences of prison life are unintended consequences of this
20 Court's sentence, but these unintended consequences are the
21 real possibilities for Mr. Strong, and nonetheless, we believe
22 that a sentence of 120 months adequately addresses all of these
23 issues and the issues found in 18 U.S.C. 3553. A sentence of
24 120 months, your Honor, is a sentence we believe the public,
25 for whom's behalf this sentence is also being imposed, will

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1 agree with and find just based on all of the circumstances and
2 not just that one incident, that one night.

3 And finally, your Honor, we believe that the family of
4 Mr. Avila-Gomez would agree with us that a sentence of 120
5 months is appropriate for someone who was only a driver,
6 someone who never saw the victim, someone who didn't have any
7 input into the robbery plan whatsoever, someone who didn't have
8 any say as to who would be chosen to be a victim, someone who
9 never carried a weapon, and someone who suffers from the type
10 of mental disabilities his entire life. This didn't start the
11 day before it happened, this didn't start when Mr. Strong got
12 into the MDC and realized that he needed -- that this may help
13 him, this is something that Mr. Strong has been dealing with
14 from the day he was born, and it's well documented.

15 We believe that a sentence of 120 months, your Honor,
16 is an appropriate sentence, a proportionate and just sentence,
17 that serves the interests of the public and this Court, and
18 also serves as deterrent for those who would like to place
19 themselves in Mr. Strong's position. Contrary to what the
20 government believes, your Honor, Mr. Strong has learned his
21 lesson. It's something we talk about all the time. Mr. Strong
22 misses his family, and his family misses him. While
23 incarcerated, Mr. Strong became a father and wants the
24 opportunity to raise his daughter and his stepdaughter, who
25 happens to be deaf and suffer from her own disabilities.

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1 As crazy as this may seem, your Honor, Mr. Strong's
2 life is a guiding light to his family, to his daughter with
3 disabilities, who when she comes to visit him, can hear him
4 struggling to try to speak English and trying to better
5 himself, an inspiration for her to do the same despite her
6 disabilities, inspiration to his little brother who sits in the
7 audience. When he goes to visit Miguel and sees Miguel, and
8 Miguel can't go home with him, he understands that hurt. He
9 understands the hurt that it places on not only himself, but
10 his family and his mother, and he doesn't want it anymore. And
11 he doesn't want it for him. He doesn't want it for him, he
12 doesn't want it for Miguel, but most importantly, he
13 understands to not follow.

14 Your Honor, 120 months is an appropriate sentence for
15 Mr. Strong, and we ask that you impose a sentence of 120 months
16 to satisfy the sentencing. Thank you.

17 THE COURT: Thank you, Mr. Nkrumah.

18 Let me just take a moment and just recognize your
19 extraordinary commitment and passion for your client's cause,
20 and I applaud you for that.

21 MR. NKRUMAH: Thank you, your Honor.

22 THE COURT: Okay.

23 Mr. Strong, do you wish to make a statement?

24 MR. NKRUMAH: Your Honor, there is a letter that
25 Mr. Strong had someone in the jail help him write. If the

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1 Court would allow me, I can read it to the Court.

2 THE COURT: Sure. Let me just confirm with Mr. Strong
3 that these are, in fact, his thoughts.

4 Mr. Strong, Mr. Nkrumah has put in front of you a
5 written letter. Are the thoughts that are expressed in that
6 letter your thoughts?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. And you have reviewed those words,
9 and they are what you want to communicate to me?

10 THE DEFENDANT: Yes.

11 THE COURT: Mr. Nkrumah, by all means, go ahead.

12 MR. NKRUMAH: Thank you, your Honor.

13 "Dear Honorable Judge Engelmayer: I am writing this
14 letter so that you can know a little bit more about my life,
15 and so you can actually know who I am. Beforehand, I'm letting
16 you know that I place someone to write this letter for me as I
17 cannot read or write, but everything in this letter is from
18 me."

19 And, your Honor, I'm going to read the letter to you
20 exactly as it's written without putting in pronunciations and
21 everything else.

22 THE COURT: Of course. Thank you.

23 MR. NKRUMAH: "I admit that I have committed a lot of
24 errors in my life. The reason for my errors and my
25 responsibility, I can only say was my adolescence and letting

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1 others influence my actions. In the time I have been
2 incarcerated, I have come to value and think better of things
3 because I know that everything that happens in life is for a
4 reason.

5 My God has given me two beautiful little girls that
6 are adorable and all to myself, and I don't want them to go
7 through the things I went through when I was young. I was
8 raised up until I was ten or eleven by my grandparents, and I
9 suffered a lot when I lost my grandfather. I want that when
10 you read this letter for you to forget that you are a judge and
11 put yourself in a position of a young man that never had no
12 guidance and nothing in which to grasp to.

13 When I got to New York City, I came to live with my
14 mom and siblings. From my childhood, I have always wanted to
15 learn to read and write, but as you can imagine how hard it has
16 been always asking for help so I can be able to move forward.
17 Because even though it sounds hard, I have always wanted to do
18 my things on my own.

19 For example, at 12 or 13 years old, I can't really
20 remember because my memory is not that good, I started working
21 at a supermarket as a delivery boy. At 14 or 15 years old, I
22 took a steering wheel without knowing how to drive. I learned
23 on my own. I turned into a cab driver with a minor problem - I
24 did not have a license. The reason which was because I did not
25 know how to read or write. Besides that, I never lost focus as

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1 my goal, which was to be able to progress. Which placed me to
2 put extra cushions on the driver's seat to appear to be taller
3 and continue to work.

4 You will probably come to ask yourself, where was my
5 mother at the moment? To tell you the truth, I had to stumble
6 here to learn that a mother is only one because she was the one
7 that I used to take her car in order to work.

8 Years passed, and at 20 years old, I was able to get a
9 license. When I went to the DMV the first time, another
10 obstacle was placed upon me. What happened was that I had a
11 daughter and a wife which I had to maintain. Taking my license
12 wasn't that hard because I only owed the quantity of \$10,000 in
13 tickets, and my grandma gave it to me as a present because she
14 said that was a gift from God, me being able to obtain a
15 driver's license. And I know when I get out of here, I will do
16 anything possible so that my kids and nephew won't have to go
17 through what I went through.

18 I'm not saying everything I've been through so that
19 you can show pity on me, it's so you can know, more or less,
20 something about my life. I also want you to know that on the
21 ninth month and the fourth day of 2009, my only error was being
22 a driver. I know that in the plea agreement I took before your
23 Honor, I had to accept a lot of responsibilities of what
24 happened that day, and I did. And the reality is that it was
25 me. I wasn't forced to plea, but I did fear that just because

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1 I was the driver, I would never be able to see my kids or
2 family again because another person wants to commute their
3 prison time and not accept responsibility for their actions.

4 I'm not saying I'm innocent, but I want that on your
5 authority that you sentence me to my participation as you see
6 fit. Because last time I went to court, the last thing I
7 remember you saying to me was that you don't have to be
8 persuaded by either the government, or lawyers, or anyone, that
9 you in the end decide what you see is fit. I have never
10 decided to cause harm towards anyone.

11 If I had the power to -- out of the 79 codefendants I
12 had, if I had the power to place them in front of them one at a
13 time, you can only take out that will talk negative of me, and
14 that's the person that committed his crime and doesn't want to
15 accept full responsibility for his crime.

16 Like I was telling you, another thing that happened in
17 my life, like how was it that I joined the gang, this started
18 at the age of 14 or 15 when I started in Kennedy High School.
19 Around there were a lot of gangs. I'm not saying the school
20 was bad, the students were what made it bad.

21 I met a few of my codefendants, and throughout that, I
22 started sharing with them without knowing what was right or
23 wrong. We ate together, hung out together, but since I wasn't
24 part of the gang, I couldn't hear what they were talking about.
25 A lot of people think that they haven't lived this life, that

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1 the one that enters a gang is for protection in order to be
2 someone big in life. Whoever hasn't lived this life doesn't
3 know what this is. I'm giving you an example.

4 My mom is single, we are four siblings. My mother
5 used to be called from school that I had any type of problem
6 there, and when I got home, I would get beaten. I would be
7 asked what was wrong with me. I studied with people in
8 wheelchairs and helmets, and I didn't have anyone to speak to,
9 and that's where what I thought were my friends came into
10 place. They were older, and they pulled me to their side.
11 Almost at the age of 14, they invited me to try cocaine and
12 guns, but I left because I realized that this wasn't for me. I
13 wanted to leave, but there was love missing. Now, I asked
14 myself, like I said before, out of the 79 codefendants, have
15 they seen me with a knife or a gun? Never, because that's not
16 me.

17 Changing the subject, because if I was the victim, my
18 family would want to know who are responsible. Even though I
19 did not know the victim, I think that what's wrong is wrong,
20 and one way or another, I had something to do with it. And
21 believe me, I am regretful of going out that day. I got
22 nothing in exchange. We went out to rob. But what did we
23 steal? Not even the cell phone or the money.

24 I'm not sure how to explain what happened that day.
25 These are the reasons which I am apologizing to the victim's

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1 family and sending my condolences to them, because the life of
2 a person that was not doing anything wrong was taken. And to
3 my family, for what I am putting them through. Thank you --
4 "and to my family for what I am putting them through. Thank
5 you, your Honor, for your time."

6 THE COURT: Thank you.

7 Mr. Strong, is there anything further you would like
8 to say today?

9 THE DEFENDANT: No. Thank you very much.

10 THE COURT: Mr. Nkrumah, may I just ask you, in the
11 course of your client's statement, there was a reference made
12 to a person or persons who did not accept responsibility for
13 their crimes. It was not entirely clear to me who that was a
14 reference to.

15 MR. NKRUMAH: Your Honor, that's a reference to the
16 person that he believes snitched or told about the offense, and
17 the reason why he did it, to try to lower -- lessen his
18 sentence, and in Miguel's mind, not take full responsibility
19 for his actions because he's the one who pulled the trigger
20 according -- Miguel believes he knows who the cooperator was.

21 And he believes that the cooperator was the person who
22 pulled the trigger, and he believes that the cooperator
23 cooperated the way that he did to lessen his time because he
24 didn't want to take the full responsibility and be sentenced
25 fully for his actions.

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1 THE COURT: Thank you.

2 Mr. Smith, just for the benefit of the clarity of the
3 record, since this was developed during the trial of another,
4 remind me the name of the cooperating witness who testified at
5 the Lopez-Cabrera trial who admitted that he, in fact, was the
6 person who pulled the trigger.

7 MR. SMITH: Yes, your Honor. It was Jose Marmelejos.

8 THE COURT: Very good.

9 Just purely for clarity of the record's sake,
10 Mr. Strong, Jose Marmelejos, who I believe must be the person
11 you're referring to, admitted at the criminal trial of Felix
12 Lopez-Cabrera that he, in fact, was the gunman. So whatever
13 your views are about whether or not that person is or isn't
14 taking responsibility, as a factual matter, he has admitted
15 being the gunman in that offense.

16 Does anyone else have anything they want to say before
17 I impose sentence?

18 MR. SMITH: No, your Honor.

19 MR. NKURUMAH: No, your Honor.

20 THE COURT: I'm going to take a moment and collect my
21 thoughts.

22 (Pause)

23 THE COURT: Is there any reason why sentence should
24 not now be imposed?

25 MR. SMITH: No, your Honor.

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1 MR. NKRUMAH: No, your Honor.

2 THE COURT: As I have stated, and as counsel have
3 agreed, the guideline range that applies to this case is
4 between 210 and 262 months' imprisonment. Under the Supreme
5 Court's decision in Booker and the cases that have followed it,
6 however, the guideline range is only one factor that a court
7 must consider in deciding the appropriate sentence.

8 The Court is also required to consider a number of
9 other factors, the other factors set forth in Title 18, United
10 States Code, Section 3553(a), the sentencing statute, and these
11 facts include the following: The nature and circumstances of
12 the offense and the history and characteristics of the
13 defendant, the need for the sentence imposed to reflect the
14 seriousness of the offense, to promote respect for the law, and
15 to provide just punishment for the offense, the need for the
16 sentence imposed to afford adequate deterrence to criminal
17 conduct, the need for the sentence imposed to protect the
18 public from further crimes of the defendant, and the need for
19 the sentence imposed to provide the defendant with needed
20 educational or vocational training, medical care, or other
21 correctional treatment in the most effective manner.

22 It is important that the Court avoid unwarranted
23 sentence disparities among defendants with similar records who
24 have been found guilty of similar conduct. In a case such as
25 this, involving many dozens of defendants, I endeavor, as I

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1 have in this particular sentencing, to make sure that the
2 sentence imposed here bears a rational relationship to the
3 other sentences imposed in the case.

4 The Court is also required to impose a sentence
5 sufficient, but no greater than necessary to comply with the
6 purposes that I have just described. I find that the sentence
7 that I'm about to pronounce is sufficient, but not greater than
8 necessary to satisfy the purposes of sentencing that I just
9 mentioned.

10 Mr. Strong, I've given a lot of thought and attention
11 to the appropriate sentence in your case in light of those
12 so-called Section 3553(a) factors and the appropriate purposes
13 of sentencing as set out in the statute, and the following are
14 my thoughts:

15 Arriving at the just and reasonable sentence in this
16 case is challenging. On the one hand, you engaged in truly
17 terrible criminal conduct, including participating in the
18 felony murder of David Avila-Gomez. On the other hand, there
19 are significant mitigating facts involving your background and
20 your mental acuity.

21 As to your conduct on September 4th, 2009, you and
22 four other members of the Bad Boys faction of the Bronx
23 Trinitarios gang set out to commit a robbery. You were the
24 driver, and you supplied the car. A gun was brought, it was
25 stashed behind the glove compartment of the car. The group of

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1 you spotted David Avila-Gomez. He was spotted in Yonkers
2 holding a cell phone. The group decided to rob him. Three of
3 the five of you got out of the car, you stayed behind. One of
4 your coconspirators, Jose Marmelejos, pulled the gun on
5 Mr. Avila-Gomez, and when he resisted, shot Mr. Avila-Gomez
6 three times. The five of you -- all of you heard the gunshots.
7 The five of you then drove away, leaving Mr. Avila-Gomez to
8 die, which he did.

9 I understand that when you set out that day, you did
10 not plan to kill anyone. That is important context. Your goal
11 was to rob, not to kill. That is the reason why I found the
12 three-level downward departure, the three-level reduction, from
13 the guideline sentence appropriate. Were it not for that
14 reduction, your guideline range would have been between 292 and
15 365 months' imprisonment, not between 210 and 262 months. But
16 make no mistake, it was also foreseeable that death would
17 result from your mission. That was why the group brought a
18 gun.

19 When a robbery at gunpoint is carried out, it is
20 always possible that events will escalate, and that the gun
21 will be fired. And so although you weren't the gunman, and
22 although you didn't personally decide to do the shooting and
23 didn't learn of the actual shooting till you heard it
24 occurring, you are among those responsible for it. That is the
25 premise of the felony murder doctrine. Felonies, like armed

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1 robberies of David Avila-Gomez, carry with them the risk of
2 murder breaking out.

3 From the vantage point of Section 3553(a), I need to
4 consider the seriousness of your criminal conduct.

5 Participation in a robbery and the felony murder of an innocent
6 civilian just to steal a cell phone is terribly serious. The
7 murder of David Avila-Gomez was a shocking and terrible event.
8 An innocent man died, and his family will suffer forever
9 because the five of you wanted his cell phone.

10 And it gets worse than that, because the reason for
11 the robbery was to advance the goals of a violent street gang,
12 the Trinitarios. The gang needed money to allow Felix
13 Lopez-Cabrera, "Suztancia," to pay a drug debt, and stealing
14 the cell phone was a means to get that money.

15 Your conduct is also serious because the robbery was
16 planned out in advance. That is why you got the car. It
17 wasn't an impulse event.

18 And afterwards, as reflected in the presentence
19 report, the group of you continued to look for people to rob.
20 According to paragraph 76 of the presentence report, the group
21 thereafter headed from Yonkers to Haverstraw to locate an
22 individual who owed Mr. Lopez-Cabrera money for drugs, and once
23 he could not be found, according to the presentence report, and
24 I am quoting, "Once in Haverstraw, the group burglarized
25 several cars on the street."

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1 And the attack on David Avila-Gomez was not the only
2 act of violence in which you personally engaged. Your counsel,
3 Mr. Nkrumah, described the robbery and murder of
4 Mr. Avila-Gomez as if it were a unique event, and to the extent
5 that murder occurred, I suppose that's true. He said that one
6 incident, that one night, but there were other incidents, and
7 there were other nights.

8 According to the presentence report, you engaged in
9 two other violent incidents. I'm now reading aloud paragraphs
10 77 and 78 of the presentence report. Quote: "Strong was
11 involved in at least two other violent incidents, specifically
12 during the fall of 2006, in the vicinity of 228th Street in
13 Bronx, New York, Strong and other codefendants chased members
14 of the Bloods for numerous blocks and assaulted them. During
15 this incident, one codefendant was armed with a cane, and
16 Lopez-Cabrera was armed with a machete. Strong assaulted one
17 of the victims with a golf club."

18 Paragraph 78, quote: "Additionally, during the spring
19 of 2006, in the vicinity of 2477 Grand Concourse, Bronx, New
20 York, Strong and other codefendants participated in a beating
21 and stabbing of members of the DDPs. During this incident,
22 among other things, Silverio," referring to a codefendant,
23 "stabbed a victim in the ear, and Lazallo," referring to
24 another codefendant, "stabbed a victim." And these attacks,
25 too, were undertaken to strengthen the gang's hold.

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1 Paragraph 74 of the presentence report states that you
2 became a Trinitarios in the mid-2000s, and you were a long-time
3 member of the Bad Boys sect. From the perspective of Section
4 3553(a), a very long sentence is needed here, first because of
5 the seriousness of your acts, but it's also necessary to
6 promote respect for the law, and it's necessary to achieve just
7 punishment. Your sentence needs to take account of the fact
8 that as a result of the incidents in which you engaged, one
9 man, David Avila-Gomez, is dead, and two others were beaten
10 and/or stabbed, and also as a result, the gang's grip on its
11 part of the Bronx was strengthened, at least until this case
12 was taken down.

13 I've now presided over two long trials involving
14 members of the Trinitarios, and it is clear to me that
15 incidents like the ones in which you participated created a
16 climate of fear and even terror, and they served to cement the
17 gang's hold over a part of the northwest Bronx. Under Section
18 3553(a), I am also to consider the interest in general
19 deterrence, and that means the need to impose a sentence in
20 this case that is sufficient to deter other people from
21 committing crimes. That is really important here. Gang
22 violence is an epidemic problem in this City and in parts of
23 this nation. A long sentence is needed to deter adolescents
24 and young men from joining violent gangs like the Trinitarios.
25 It is needed also to discourage young men like you from joining

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1 missions to rob, like the one to rob David Avila-Gomez that
2 ended up taking his life. I want the next Miguel Strong to
3 pause before using his car and driving it to help violent gang
4 members commit a violent robbery. So the sentence I impose
5 here today needs to be long enough to get the message across to
6 others to stop before engaging in violent gang activity.

7 There is also a separate interest in what is called
8 specific deterrence. That refers to the need to impose a
9 sentence that is sufficient to deter you personally,
10 Mr. Strong, from committing further crimes. And that interest
11 exists in this case because you have been arrested four other
12 times, according to the presentence report, in 2007, 2009, and
13 twice in 2010. Although none of those offenses was nearly as
14 serious as the robbery and felony murder of David Avila-Gomez,
15 the point is that none of those brushes or encounters with the
16 law got you to stop committing crimes. Instead, it appears an
17 arrest or a sentence was just a cost of doing business. And so
18 the sentence I impose here needs to be a wakeup call for you,
19 it needs to be long enough and loud enough to get the message
20 across to you in a way that will register to not commit crimes
21 in the future or else you will stand to go to jail for a long
22 time.

23 Relatedly under Section 3553(a), I am to consider the
24 interest in incapacitation or protection of the public, and
25 that refers to the interest in protecting the public from you

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1 that is served by your being in prison where you don't pose a
2 threat to rob, or steel, or hit someone with a golf club, or
3 participate in an assault. That interest here, in my judgment,
4 is also significant. You have been a participant in enough
5 violent acts, to give me grave concern that you are drawn to
6 such violence. It is possible, as Mr. Nkrumah suggests, that
7 you have obtained greater maturity now since your arrest and
8 incarceration in this case, but I cannot be sure of it, and the
9 report from Dr. Shea, although mitigating in other respects,
10 gives me some hesitation in concluding that you have the
11 disposition to have thoughtfully reflected on the bad choices
12 you have made and learned from them, truly learned from them,
13 such that they won't be repeated in the future. Simply put, I
14 cannot be sure that if you were back at liberty, you would not
15 continue again to associate with bad elements and be led to
16 commit crimes with them. So I regret to say there is a public
17 interest in keeping you behind bars.

18 Thus far, I have considered at some length factors
19 that point towards a high sentence, and those facts are
20 considerable, but there are also factors that point in the
21 other direction, and I am going to review them now.

22 First of all, you accepted responsibility. I applaud
23 you for that. You pled guilty. That matters to me. Had you
24 not done so, your guideline range would have been significantly
25 higher, and so would the sentence I would have imposed. I also

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1 noted today that the apology that you prepared that Mr. Nkrumah
2 read on your behalf contained an apology to the victim's
3 family, to the family of Mr. Avila-Gomez. Surprising as it may
4 seem, I don't always hear those apologies, and I appreciated
5 that that was included.

6 Second, as your counsel's very effective sentencing
7 submission has shown me, you have had more than your share of
8 adversity starting at a young age. You grew up without a
9 father, you came to this country late and had a rough
10 transition, including in school, you had a lot of difficulty
11 assimilating, your family did not support you, and your brother
12 at times cruelly ridiculed you, and at least until the point at
13 which you were arrested, you could not read or write English.
14 And as Dr. Shea concluded, you have some significant cognitive
15 limitations and learning issues. I don't see any point in
16 going through his report in detail, or for that matter, the
17 Social Security Administration's ruling in detail, but please
18 know that I have read those reports extremely carefully, and I
19 am incorporating by reference them here. The broad point is
20 that your judgment may well have been impaired by intrinsic
21 factors for which you are not to blame.

22 To be clear, and as is not disputed, you clearly
23 understood right from wrong. You knew that robbery and assault
24 were wrong, but I understand that the circumstances of your
25 life and your makeup may have made you perhaps more

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1 impressionable than some others in the Trinitarios gang, and as
2 Dr. Shea concluded, you were often the subject of withering
3 criticism at home. I understand that all of this may have made
4 joining a gang more attractive to you. It was a place where
5 you were accepted, and to some degree, valued. None of that,
6 of course, excuses your crimes or participation in gang
7 violence, but it is important context, and I have it firmly in
8 mind.

9 Third, under Section 3553(a), I am to consider your
10 history and characteristics apart from what I have just
11 mentioned. From your counsel's sentencing submissions, I
12 learned not only of your hard life and some of the limitations
13 and challenges you faced, I also understand that in your
14 private life, you are a loving father, and son, and significant
15 other. I consider those traits also in determining the just
16 sentence. In particular, I have read with interest the letter
17 from your two sisters, from your mother, and from your
18 stepfather. Your sister, Escrawlina, describes you as a very
19 good brother, and she says she wishes you could be home to be
20 with your baby girl. Your sister, Eswilda, says that you have
21 always been her right hand and her rock and describes you as
22 the happiness of our family. Your stepfather, Raphael Medina,
23 although not apparently aware of your crimes, describes you as
24 very good and very respectful, and your mother is similarly
25 complimentary of you and says he has a wife and two-year-old

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1 daughter who are waiting for him. I consider those
2 testimonials to you and the implicit testimonials in those
3 letters in your favor at the time of sentence.

4 The defense has asked me to impose a 120-month
5 sentence here. I cannot agree with that at all. The conduct
6 here, particularly the participation in the Avila-Gomez robbery
7 and ultimately felony murder, and also the two other assaults
8 are simply too wrongful to justify a sentence of that length.
9 From the Section 3553(a) perspective of general deterrence and
10 also as a matter of just punishment, I believe a longer
11 sentence than that is needed.

12 The interest of incapacitation, in my judgment, in
13 particular requires a much longer sentence. It's important
14 that by the time you are released from prison, you be at an age
15 when it can be said either that you are more mature and less
16 likely to capitulate to join gang violence or that you will
17 have passed out of the age range where you are likely to be
18 recruited into a gang.

19 The government, for its part, has asked for a
20 guideline sentence, meaning at least 210 months in prison. I
21 have carefully considered whether a sentence of that length is
22 necessary here or whether, particularly given the limitations
23 chronicled in Dr. Shea's very articulate and convincing report,
24 a somewhat shorter sentence is sufficient. I think the
25 government's position is a reasonable one. The issue is

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1 whether the interests of Section 3553(a) can also be met by a
2 lower sentence.

3 In considering that question, I have also examined
4 sentences of other defendants in this case who have played
5 secondary or support, but also important roles in murders or
6 attempted murders and also participated in other acts of
7 violence. I do so because I understand Section 3553(a) to
8 direct me to treat like offenders alike.

9 Considering all these factors, I believe a sentence
10 somewhat below the guideline range, but not dramatically below
11 it at all, is appropriate here. Such a sentence would fairly
12 achieve the purposes of sentencing as reflected within Section
13 3553(a) while not being any longer than necessary to do so.
14 The sentence I impose, therefore, will reflect a very modest
15 downward variance.

16 I'm now going to state the sentence I intend to
17 impose. The attorneys will have a final opportunity to make
18 legal objections before the sentence is finally imposed.

19 Mr. Strong, would you please rise. Will you please
20 stand up.

21 After assessing in detail the particular facts of this
22 case and the factors under Section 3553(a), including the
23 sentencing guidelines, it is the judgment of the Court that you
24 are to serve a sentence of 192 months' imprisonment, or 16
25 years, in the custody of the Bureau of Prisons, to be followed

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1 by a period of three years' supervised release. I will
2 recommend to the Bureau of Prisons that it provide Mr. Strong
3 with access to any mental health programs and treatment for
4 which he is determined to be eligible.

5 As to supervised release, the standard conditions of
6 supervised release shall apply. In addition, you will be
7 subject to the following mandatory conditions: You shall not
8 commit another federal, state, or local crime; you shall not
9 illegally possess a controlled substance; you shall not possess
10 a firearm or destructive device; I'm going to suspend the
11 mandatory drug testing condition due to my imposition of a
12 special condition requiring drug treatment and testing; and you
13 shall cooperate in the collection of DNA as directed by the
14 probation officer.

15 You must also meet the following special conditions
16 which are the ones set out on page 36 of the presentence
17 report, and I've given considered attention given the nature of
18 this case and of the Trinitarios gang to these conditions, and
19 I find them all merited. In brief, you are to participate in a
20 drug and alcohol testing approved by the United States
21 Probation Office; you shall participate in a mental health
22 program approved by the same probation office; you shall submit
23 your person, residence, place of business, vehicle, or other
24 premises under your control to a search on the premise that the
25 probation officer has a reasonable basis for belief that

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1 contraband or evidence of a violation of the conditions of
2 release may be found; you shall provide the probation office
3 with access to any requested financial information; and you are
4 to report to the nearest probation office within 72 hours of
5 release from custody.

6 I'm also ordering that you pay to the United States a
7 special assessment of \$100 which shall be due immediately.

8 I have the legal authority to impose a fine. I'm not
9 going to do so. I'm persuaded that you don't have the ability
10 to pay it. The government is not seeking forfeiture or
11 restitution, and I will not order that.

12 Does either counsel know of any legal reason why this
13 sentence should not be imposed as stated?

14 MR. SMITH: No, your Honor.

15 MR. NKRUMAH: No, your Honor.

16 THE COURT: All right. The sentence, as stated, is
17 imposed.

18 Mr. Smith, are there any open counts?

19 MR. SMITH: There are, and we ask that they be
20 dismissed.

21 THE COURT: Okay. I will dismiss those counts.

22 Mr. Strong, to the extent you haven't already given up
23 your right to appeal your conviction and your sentence as a
24 result of your guilty plea and the plea agreement you've
25 entered into with the government, you have the right to appeal

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1 your conviction and your sentence. If you're unable to pay for
2 the costs of an appeal, you may apply for leave to appeal
3 in forma pauperis. The notice of appeal must be filed within
4 14 days of the judgment of conviction.

5 Mr. Nkrumah, is there a recommendation you'd like me
6 to make to the Bureau of Prisons with respect to where the
7 defendant is assigned?

8 MR. NKRUMAH: Yes, I would, your Honor. I would ask
9 that this Court recommend to the Bureau of Prisons that
10 Mr. Strong be housed in the facilities that can facilitate
11 visitation by his family in the Northeast corridor of the
12 country.

13 THE COURT: I will recommend that he be assigned to a
14 facility as close as possible to the New York area. I take it
15 that's what you're seeking to accomplish?

16 MR. NKRUMAH: Yes, your Honor.

17 THE COURT: Very good. I'll be glad to do that.

18 Is there anything else from the government?

19 MR. SMITH: No, your Honor.

20 THE COURT: Anything from the defense?

21 MR. NKRUMAH: No, your Honor.

22 THE COURT: Let me just ask you to be seated. I want
23 to say a word or two to Mr. Strong's family.

24 Ladies and gentlemen, I can see your faces, and I can
25 see the heartache on them. I want to just say this to you: I

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1 read the letters that you submitted for Mr. Strong on his
2 behalf. They gave me an insight into him. They reinforced
3 some of the themes that Mr. Nkrumah stated in his letter, and
4 they were helpful and influential to me getting a better, more
5 rounded sense of who Miguel Strong is.

6 I also want to thank and acknowledge you for being
7 here today. I can see how hard a day this is for you. Your
8 being here today, as well as on February 3rd when we initially
9 started the sentencing proceeding, says to me that you're going
10 to be here for Mr. Strong throughout the long term while he's
11 in prison, and, most of all, when he comes out. That's when
12 he's going to need you most of all. There have been moments in
13 his life when people have not been there for him. The fact
14 that you're here now tells me that you will be here for him in
15 the long term when he needs you most, and that's encouraging to
16 me.

17 With appreciation for how hard a day this is, I thank
18 you for being here. We stand adjourned.

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